IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 1205 of 2001(A)

OPMV.1474/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANT/PETITIONER:

ABDUL HAKKIM, S/O.KUNJUMOHAMMED, RAYAMMARAKKAR VEETTIL, MARUTHAYOOR, PAVARATTY, CHOWGHAT, THRISSUR.

BY ADV. SRI.P.V.CHANDRA MOHAN
SRI.T.VENUGOPALAN

RESPONDENTS/RESPONDENTS:

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1. SIDDHARTHAN, S/O.APPUNNI, CHANDHANPARAMBIL HOUSE, THALAKKOTTUKARA, VIA - KECHERY, THRISSUR DT.

2. THE NEW INDIA ASSURANCE CO. LTD., BRANCH OFFICE, WADAKKANCHERRY ROAD, KUNNAMKULAM.

BY ADV. SRI.P.G.GANAPPAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.1205 of 2001

Dated, this the 18th day of December, 2007

JUDGMENT

The petitioner in O.P.(MV) No.1474/1998 on the file of the Motor Accidents Claims Tribunal, Thrissur is the appellant. Appellant/petitioner filed an Original Petition claiming a compensation of Rs.84,000/-. It was alleged that the petitioner sustained injuries in a road traffic accident at 4.30 p.m. on 2.2.1998. According to the petitioner he was riding a scooter bearing registration No.KL-8/J 7998 along the Kechery-Wadakkancherry public road from east to west. When he reached at Velur a lorry bearing registration No.KL-8/F 4507 came from the opposite direction, knocked him down and he sustained injuries. He filed the Original Petition claiming compensation. Owner-cum-driver of the lorry remained exparte. Insurer alone contested. Negligence alleged was denied. It was contended that the lorry was not involved in the accident and the accident occurred due to the negligence of the appellant, who was the rider of the scooter himself. It was also contended that initially a case was registered against the driver of the lorry, but subsequently it was referred as mistake of facts. Quantum of compensation claimed was also disputed. On the side of petitioner PW1 was examined and Exts.A1 to A12 marked. On the side of contesting respondent Exts.B1 and B2 marked. In addition to that copies of the final report and insurance policy were produced. Tribunal relying on the evidence of the appellant

himself as PW1 found that the accident occurred due to the negligence of the appellant himself and dismissed the Original Petition. Challenging that award, this appeal is filed.

2. The learned counsel for the appellant has argued that at the place of accident road lies east to west. Appellant was proceeding from east to west. So he had to ride the scooter through the southern side of the road. Lorry was coming from west to east. So the correct side was the northern side of the road. According to the appellant lorry was driven in a reckless manner and it came through wrong side of the road. So he had no other option but to swerve the scooter to south so as to save his life. He had taken the vehicle out of road and it went to the mud road and entered into the sand heap and caused the accident. It is argued that even though there was no actual hitting the appellant would have sustained fatal injuries if a collision took place. It is argued that unless the appellant swerved the vehicle the lorry would have hit the scooter. This contention is denied by the second respondent. Learned counsel for the insurer has argued that there is no evidence to hold that the lorry came to the wrong side. It is argued that though a case was registered against the driver of the lorry even the Police referred the case as mistake of facts which will reveal that the accident occurred due to the negligence of the appellant. It is also argued that the appellant acted on an apprehension that an accident may take place and hence neither the driver of the lorry nor insurer can be made liable. In fact materials on record are

not sufficient to hold that the driver of the lorry was responsible. If, as a matter of fact, the lorry was driven through wrong side in a rash or negligent manner and if the appellant had to swerve the vehicle in order to save his life, it is not possible to dismiss the application in its entirety. So the questions whether the lorry was driven through wrong side and whether there was such a situation warranting swerving of the vehicle to the mud portion of the road are to be established. I am of the view that another opportunity can be granted to the appellant to prove that case.

In the result, appeal is allowed. The award passed by the Tribunal dismissing O.P.(MV) No.1474/1998 is hereby set aside and the case is remanded to the Tribunal for fresh disposal in accordance with law. Tribunal is directed to take O.P.(MV) No.1474/1998 back to file and dispose of the same afresh in accordance with law after giving a reasonable opportunity to both sides to adduce evidence . Parties are directed to appear before the Tribunal on 22.1.2008.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.1205 of 2001

JUDGMENT

18th December, 2007.